

# SHOOK, HARDY & BACON TOBACCO LITIGATION UPDATE

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## STATE OF FLORIDA/ASSOCIATED INDUSTRIES:

On August 9, the First District of the Florida Court of Appeal issued an order granting the motion to certify the appeal in the Associated Industries case to the Florida Supreme Court. The motion to certify the appeal was filed by the defendant state government entities. The defendants had noticed an appeal to the First District from the trial court's order of June 26 that granted in part the motion for declaratory judgment filed by the plaintiffs in Associated Industries. Plaintiffs in Associated Industries are several entities that conduct business in Florida, including Philip Morris. The plaintiffs have noticed a cross-appeal.

On August 7, the State of Florida court issued an order granting the tobacco defendants' motion to extend the stay in the action. Defendants asked the court to extend the stay due to the pending appeal in the Associated Industries case. State of Florida was stayed from April 7 to July 7 to enable the Associated Industries court to rule on the constitutionality of Florida's Third Party Liability Act, the legislation that forms the basis for the State of Florida action.

The State of Florida court has scheduled a status conference for October 6.

*Associated Industries, et al. v. State of Florida Agency for Health Care Administration; 6/30/94; Circuit Ct., FL*

*State of Florida, et al. v. AT, AB, RJR, RJRN, BAT, BATUS, B&W, PMC, PM, Ligg, L&M, Brooke, Loews, Lor, U.S.T., UST, CTR, TI, H&K, Brit. Amer., Dosai; 2/22/95; Cir. Ct., FL*

## ADDICTION CASES FILED IN NEW JERSEY, RHODE ISLAND:

On July 25, Joseph Arnold and Claudette Arnold filed suit in the United States District Court for the District of Rhode Island in which they allege that Joseph Arnold is addicted to cigarette smoking. American Brands, RJR Nabisco, Philip Morris, Lorillard and Brown & Williamson are the defendants named in the action. None of the brands Mr. Arnold allegedly smoked are identified in the complaint. Mr. Arnold seeks an unspecified amount in actual and punitive damages. Claudette Arnold individually seeks damages for loss of consortium. Plaintiffs are represented by Guy Wells, a sole practitioner in East Greenwich, Rhode Island, and Ralph Ryan, a sole practitioner in Pawtucket.

Steven Humes, who lives in Marlton, New Jersey, filed suit pro se in the Superior Court of Burlington County, New Jersey, against Philip Morris Companies on July 26. Mr. Humes alleges he is addicted to smoking the Marlboro and Marlboro Light brands manufactured by Philip Morris. Mr. Humes, who states in the complaint that he has "become a drug addict" due to his purported addiction to nicotine, further alleges that he has sought medical assistance in stopping smoking,

including use of the nicotine transdermal system. Mr. Humes seeks unspecified amounts in damages for his claims. Burlington County is in south-central New Jersey.

*Arnold v. AB, RJRN, PM, Lor, B&W; 7/25/95; U.S.D.C., RI*

*Humes (pro se) v. PMC; 7/26/95; Superior Ct., NJ*

## DUNN:

On August 4, the Superior Court of Delaware County, Indiana, granted defendants' unopposed motion to vacate the November 13, 1995, trial date and the October 5 pre-trial conference. In their motion, which was filed on August 3, defendants contended the trial date should be vacated because plaintiffs have an appeal pending before the Indiana Supreme Court that is based on venue issues. Argument is scheduled to be heard by the Indiana Supreme Court in plaintiffs' appeal on October 3.

Plaintiffs' appeal seeks review of the Court of Appeals' order reversing the ruling by the trial court that denied defendants' motion to transfer venue. Plaintiffs allege their decedent, a non-smoker, died of lung cancer caused by exposure to environmental tobacco smoke in the workplace.

*Dunn v. RJRN Holdings Corp., RJR, B&W, BAT, PM, PMC, Ligg, L&M, AB, AT, Loews, Lor, TI, CTR; 5/28/93; Super. Ct., IN*

## STERLING:

On July 7, the court entered an order granting R.J. Reynolds' motion to dismiss due to plaintiff's failure to submit an opposition. Plaintiff did not notice an appeal from the judgment that ensued from the July 7 order. Plaintiff, who filed the case pro se and is incarcerated in a correctional facility, alleged he is addicted to smoking.

*Sterling (pro se) v. RJR; 4/10/95; U.S.D.C., W.D., MO*

## MILLER:

On August 2, United States Magistrate Judge Thomas Reuter issued a report and recommendation that the defendants' motions to dismiss be granted with prejudice. The tobacco companies and prison officials named in plaintiffs' one-hundred page amended complaint filed separate motions to dismiss that were based on failure to state a claim.

The nature of the injuries plaintiffs alleged they had incurred as a result of smoking or exposure to tobacco smoke was not stated in the amended complaint; in the original complaint, two of the plaintiffs alleged unspecified injuries as a result of smoking cigarettes, while two other plaintiffs alleged unspecified injuries as a result of exposure to environmental tobacco smoke. Each of the plaintiffs is incarcerated in a federal correctional facility in Schuylkill, Pennsylvania. The

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amended complaint also sought to add claims on behalf of three additional inmates.

*Miller, W. et al. (pro se) v. B&W, AT, Ligg, Lor, PM, RJR, et al.*; 11/10/94; U.S.D.C., E.D., PA

### CASTANO:

On August 8, the Fifth Circuit Court of Appeals issued a notice setting the briefing schedule in defendants' appeal. Defendants' opening brief is scheduled to be filed with the Fifth Circuit on September 18, plaintiffs' reply brief is due on October 18, and defendants' reply brief is scheduled to be filed on November 1. Argument was not set in the briefing notice. In the appeal, defendants are seeking review of the trial court's order of February 17, 1995, that granted plaintiffs' motion for class certification.

*Castano, et al. v. AT, AB, RJR, RJRN, B&W, BATUS, PM, PMC, L&M, Ligg, Brooke Grp., Lor, Loews, UST, TI*; 3/29/94; U.S.D.C., E.D., LA

### ALLGOOD:

The Fifth Circuit Court of Appeals has set a briefing schedule in plaintiffs' appeal of the trial court's judgment in defendants' favor. Plaintiffs' opening brief is due on September 6, defendants' opposition is due on approximately October 9 (or thirty-three days after service of plaintiffs' brief), and plaintiffs' reply brief is due on approximately October 23 (or fourteen days after service of defendants' opposition brief). Argument in the appeal has not been set. The trial court entered judgment in defendants' favor on April 3 based on the statute of limitations and § 402(A) of the Restatement (Second) of Torts. The trial court denied plaintiffs' motion for reconsideration on June 14.

*Allgood v. RJR, AT, TI, CTR*; 1/4/91; Fifth Circuit Ct. of Appeals from U.S.D.C., S.D. TX

### BROIN:

On August 8, plaintiffs filed an unopposed motion for an extension of time to file their brief in opposition to defendants' appeal. The brief had been due on August 9, but will be due on August 30 if the Third District of the Florida Court of Appeal grants plaintiffs' motion. Defendants' appeal is from the trial court's order of December 12, 1994, that granted plaintiffs' motion for certification of a class of flight attendants on U.S.-based airlines that never regularly smoked cigarettes and who have been injured as a result of their exposure to environmental tobacco smoke in the aircraft cabin.

*Broin, et al. v. PM, PM Prod., RJR, Lor, Ligg, AT, Dosal Tob., B&W, UST, TI, CTR, TMA, FL Tob./Candy Assoc., Nat. Assoc. of Tob. Dist.*; 10/31/91; Cir. Ct., FL

### MORRIS (FLORIDA):

The court has set a trial date of January 26, 1996. *Morris* is pending in the Circuit Court of Broward County, Florida, against American, Brown & Williamson, Lorillard, Philip Morris, R.J. Reynolds and asbestos companies. Plaintiff is represented by the Ratiner, Reyes firm of Miami.

*Morris v. AT, B&W, Lor, PM, RJR, et al.*; 7/\_\_\_/95; Circuit Ct., FL

### CORDOVA:

The trial court entered an order on July 31 that vacated the December 12, 1996, trial date and set a new trial date of December 13, 1997. The July 31 order also set a new pre-trial schedule. Plaintiff in *Cordova* alleges various unfair business practices and seeks injunctive relief and disgorgement of profits against several tobacco companies. The Tobacco Institute, the Council for Tobacco Research and Hill & Knowlton. *Cordova* is pending in state court in San Diego, California.

*Cordova v. Ligg, PM, AT, RJR, UST, B&W, Lor, H&K, TI, CTR*; 5/12/92; Super. Ct., CA

### FAHEY:

On June 12, the trial court denied defendants' motion for summary judgment. The order denied defendants' motion because, according to the court, plaintiff's complaint presents questions of fact as to the extent of defendants' knowledge of the risks associated with smoking, the degree to which the defendants were able to manipulate tar and nicotine levels, and the feasibility of a safer design alternative. Defendants filed a petition for interlocutory review of the June 12 order with the Massachusetts Court of Appeals on July 12. The court denied the petition on July 19.

*Fahey v. RJR, PM, TI, CTR*; 11/9/92; Super. Ct., MA

### COLLINS:

A hearing on all pending motions is scheduled to be held on August 15. Pending motions include defendants' motion for summary judgment and plaintiff's motion to take judicial notice of the 1988 and 1989 Surgeon General's Reports. Defendants' motion for summary judgment contends that plaintiffs' survival action is time-barred and that the court lacks subject matter jurisdiction over plaintiffs' claims. Trial in *Collins*, the only smoking and health case pending in South Carolina, is scheduled to begin on May 1, 1996.

*Collins v. RJR, AT*; 6/2/94; U.S.D.C., SC

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